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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Yuji Kumakura

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01/26/2004

STAAS & HALSEY LLP

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EXAMINER

KENDALL, CHUCK O

ART UNIT

PAPER NUMBER

2122

DATE MAILED: 01/26/2004

21

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/488,019

Applicant(s)

KUMAKURA, YUJI

Examiner

Chuck O Kendall

Art Unit

2122

P26

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Remarks

1. This Office Action is the response to the communication received on January 12, 2004. Reconsideration of the instant application is requested by Applicant. All such supporting documentation has been placed of record in the file. Claims 1-27 are pending.
 - a. Previously claims 1-27, were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stupek, Jr. et al. U.S. Patent No. 5,586,304 and Kullick et al. U.S. Patent No. 5,764,992.
 - b. In this action claims are still remain rejected under the same grounds as stated in the previous office action.
 - c. In arguing Applicant asserts as stated in page 2, that there lacks a motivation to combine references.
 - d. Examiner has reproduced previous rejection for completeness and has provided a response to Applicant's current communication.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 - 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stupek Jr, et al USPN 5,586,304 (hereinafter Stupek), in view of Kullick et al. USPN 5,764,992 (hereinafter Kullick).

Regarding claims 1, 10 & 19, Stupek discloses, control information retrieving part retrieving control information that is used to execute a program; [Stupek, 5:34], a destination defining part defining destination address information that is indicated by a user and a location different from a current location where the program is stored ; [Stupek, 5:40-42], a moving part moving the program in accordance with the destination address information [Stupek 5:43-46], wherein said moving part comprises: a copying part retrieving the current address information corresponding to said definition name included in said control information in accordance with said definition information and copying all information, which is stored at a current address indicated by the current address information in accordance with the destination address (3:64-4:20); and

a deleting part deleting all information stored at the current address (5:50-54); a control information changing part changing the control information based on the destination address information [Stupek 5:48-51]. Stupek doesn't explicitly disclose deleting the program. However, Kullick does disclose this information in a similar configuration (fig. 10, see delete old). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Stupek and Kullick because, deleting outdated or previously used programs ensures better program management, hence eliminating potential software conflict.

Regarding claims 2, 11, & 20, the information processor as claimed in claim 1, wherein said control information comprises current address information indicating where the program is stored in a storage device, and wherein said changing comprises a replacing part replacing the current address

information with the destination address information to which the program is moved [Stupek 1: 55-67].

Regarding claims 3, 12, & 21, the information processor as claimed in claim 1, wherein said control information is generated when said program is installed into a storage device [Stupek 2:1-15 see CD-ROM].

Regarding claims 4, 13, & 22, the information processor as claimed in claim 1, wherein said control information is referred to when said program is executed [Stupek, 4:30-43].

Regarding claims 5, 14 & 23, the information processor as claimed in claim 1, wherein said control information is stored in a file referred to by other programs, and the file includes a plurality of control information to execute the other programs [Stupek, 6:10-30]

Regarding claims 6, 15, & 24, the information processor as claimed in claim 1, wherein said control information comprises definition information including at least one destination address information related to the program and including at least one definition name uniquely assigned to the destination address information, and wherein said control information changing part comprises a changing part changing said control information based on said definition information. [Stupek 2:5-40].

Regarding claims 7, 16, & 25, the information processor as claimed in claim 1, wherein said control information comprises:

current address information indicating where the program is stored in a storage device [Stupek, 2:5-15];

definition information including at least one destination address information related to the program and including at least one definition name uniquely assigned to the destination address information, wherein said control information changing part comprises [Stupek 5: 50-54];

a changing part changing the current address information included in said control information based on the destination address information included in said definition information [Stupek 2:1-10].

Regarding claims 8, 17, & 26, the information processor as claimed in claim 1, wherein said control information comprises:

program information to execute the program [Stupek 4:30-43];

and data information related to data created or edited by executing said program, and wherein said moving part comprises: [Stupek 2:5-10]

a program moving part moving the program [Stupek 2:5-10 see upgrade information, also refer to storage for older versions 5:53-58] and [Stupek, 2:5-10]; a data moving part moving the data when the program is moved by said program moving part [6:10-30, see Fig 1].

Regarding claims 9, 18 & 27, the information processor as claimed in claim 1, further comprising an installing part installing said program [Stupek 2:10-15].

Response to Arguments

4. Applicant's arguments filed 01/12/2004 have been fully considered but they are not persuasive to overcome the previous rejection.

Argument (1), In arguing Applicant asserts that there is no motivation to combine Stupek and Kullick.

Response (1), Specifically, as recited in previous rejection dated 09/16/03 and 12/12/03, Stupek and Kullick are used in the rejections of claims 1, 10 and 19. Stupek (primary reference), which is entitled (Automatic Computer Upgrading) and Kullick (Method and apparatus for automatic software replacement) are both analogous art and describe an installation process, including upgrading/updating programs, retrieving parts, moving parts, copying parts, and deletion and/or replacements of parts, which are all common functions during program and application installation and upgrading. As claimed by

Applicant in claim 1 "...a control information retrieving part retrieving control information that is used to execute a program... a deleting part deleting all information stored at the current address including the program" (*Emphasis added*). As recited by Stupek in (Col.5:50-55), where Stupek states "The agent then deletes 117 the control file from the staging area", and "...the agent ***may*** store 115 the older revision levels (*the program*) of the resources on a local hard disk 23....Maintaining old versions of upgrade resources allows the user to downgrade the resource, *if needed*, in the future" (*Emphasis added*). Although Stupek doesn't expressly disclose deleting *the program*, he does state that older revisions ***may be stored if needed***, by a user to downgrade the resources. This does imply and provide a suggestion that older revisions if not needed may not be stored (deleted) from the system, as the control file as recited by Stupek above.

Generally in rare cases during conflict, does a user resort to downgrading to an older version, hence there would not be a need for an older revision or version to be stored. Also in this day and age maximizing resources by removal or deletion of unused or outdated programs to optimize memory is a very general practice and would be very apparent for one of ordinary skill in the art. Kullick is provided as the secondary reference and descriptively discloses deletion of older versions after updating (installing) of a newer revision as discussed (Col:4:25-30, and FIG.10). Therefore Examiner believes as set forth above that there is a motivation to combine references to implement Applicants invention.

Argument (2), In arguing Applicant simply rehashes previous arguments pertaining to Lack of motivation to combine which is discussed above.

Examiners mention of potential conflict was only a general motivation, which one of ordinary skill would use to remove outdated or old revisions of software after upgrading.

Kullick is only being used in the independent claims for the limitation of deleting the old version after updating, and not for resolving conflict therefore Applicant's argument is moot.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence Information

5. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Chuck O. Kendall who may be reached via telephone at (703) 308-6608. The examiner can normally be reached Monday through Friday between 8:00 A.M. and 5:00 P.M. est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam *can be* reached at (703) 305-4552.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

For facsimile (fax) send to central FAX number 703-872-9306 *and* 703-7467240 draft.

Chuck O. Kendall

Software Engineer Patent Examiner



**ANTHONY NGUYEN-BA
PRIMARY EXAMINER**